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Tri-City SELPA

Culver City Unified School District, Santa Monica-Malibu Unified School District and Beverly Hills Unified School District

Parents Rights and Procedural Safeguards

Dear Parent(s)/Guardian(s)/Pupil:

This information provides you as parents, legal guardians and surrogate parents of children with disabilities, or children with suspected disabilities, from 3 years of age through age 21 with an overview of your educational rights. This notice is also provided for students who are entitled to these rights at age 18. This notice provided to you because your child is being considered for possible placement or is currently enrolled in a special education program.

You have the right to receive this notice in your primary/native language or other mode of communication (i.e., sign language or Braille), unless it is clearly not feasible to do so. These rights may also be translated orally to you if your primary/native language is not a written language. This notice will be given to you at least once per year, or upon: (1) your request; (2) the initial referral of your child for a special education evaluation; (3) reevaluation of your child; (4) removal of your child for violating a school code of conduct that constitutes a change in placement; (5) filing of a state complaint; and (6) receipt of a request for a due process hearing.

In California, special education is provided to disabled students between birth and twenty one years of age. Federal and state laws protect you and your child throughout the procedures for evaluation and identification of special education placement and services. You have the right to:

- Refer your child for special education services;
- Participate in any decision-making meeting regarding your child's special education program;
- Participate in any individualized education program (IEP) meeting about the identification/eligibility, assessment, educational placement of your child, and/or any other matters relating to the availability and provision of a free appropriate public education (FAPE) to your child.

The definitions below will help you understand the statement of rights. Should you need further information regarding the contents or use of this guide, you may contact the District's special education administrator, whose telephone number is on the last page of this document.

Definitions

Children with Disabilities: The Individuals with Disabilities Education Act (IDEA) defines "children with disabilities" as including children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities, and who by reason thereof, need special education and related services.

Consent: Consent means that: (1) You have been given all information, in your native language or other mode of communication, that is relevant to any activity for which your consent is sought; (2) You understand and agree in writing to that activity, and the consent form you sign contains a description of the activity and a list of records that will be released and to whom the records will be released in order to initiate or implement the activity; and (3) You understand that your consent is voluntary and may be revoked at any time; however, your withdrawal of consent does not negate an action that has already occurred

Evaluation: An assessment of your child using various tests and measures to determine whether your child has a disability and the nature and extent of special and related services needed by your child for his/her educational benefit. The assessment tools are individually selected for your child and are administered by competent professionals. Testing and evaluation materials and procedures will be selected and administered so as not to be racially or culturally discriminatory. The materials or procedures will be provided and administered in your child's native language or mode of communication, unless it clearly is not feasible to do so. No single procedure shall be the sole criterion for determining an appropriate educational program for a child.

Free Appropriate Public Education (FAPE): Special education and related services that: (1) have been provided at public expense, under public supervision and direction, at no cost to parents; (2) meet state educational standards; (3) include an appropriate preschool, elementary, or secondary school education; and; (4) conform to the child's IEP.

Individualized Education Program (IEP): A written document developed by the IEP team that includes at least all of the following: (1) present levels of academic achievement and functional performance; (2) measurable annual goals; (3) a statement of the special educational and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; (4) an explanation of the extent to which the child will not participate with non-disabled children in the general education programs; (5) the projected date for initiation and the anticipated duration, frequency and location of the programs and services included in the IEP; and (6) appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the child is achieving his or her goals.

Least Restrictive Environment (LRE): To the maximum extent appropriate, children with disabilities will be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the general education program will occur only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Local Educational Agency (LEA): This term includes a school district, County Office of Education (COE), a Special Education Local Plan Area (SELPA), or a charter school participating as a member of a SELPA.

Notification of Rights: Your child has the right to receive all information about her/his educational program and to make all decisions when s/he reaches the age of eighteen unless determined incompetent by state law and procedures. Non-conserved adults are presumed under the laws of the State of California to be competent.

Parent: The definition of parent includes: (1) person having legal custody of a child; (2) an adult student for whom no guardian or conservator has been appointed; (3) a person acting in place of a

natural or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives; (4) a parent surrogate; and (5) a foster parent, if the authority of a natural parent to make education decisions on the child's behalf has been specifically limited by court order.

NOTICE, CONSENT, ASSESSMENT AND ACCESS

What is prior written notice and when will I receive it?

The District is responsible for informing you, in writing, whenever it proposes or refuses to initiate a change in the identification, assessment, or educational placement of your child. The District must provide written notice to parents of this proposal or refusal within a reasonable time. This notice, if not previously provided to the parent, will also be provided upon the District's receipt of a parent's request for a due process hearing. The written notice will include:

- The procedural safeguards available to parents which is included in this notice.
- A description of the actions proposed or refused by the District with an explanation of why the agency proposed or refused to take the action and a description of other actions considered and why those options were rejected.
- A description of each assessment procedure, test, record, or report the agency used as a basis for the proposal or refusal.
- A description of other options considered by the IEP team and the reason why those options were rejected.
- A description of any other factors, which are relevant to the District's proposal or refusal.
- Notice that parents can obtain copies or assistance in understanding their rights and procedural safeguards from the District's special education administrator, the SELPA Director, or the California Department of Education in Sacramento. All relevant contact information is located on the last page of this notice.

What constitutes parental consent and when is it required?

When Parental Consent is Required.

Your written consent, as defined above, is required for:

Initial evaluation. The District cannot conduct an initial evaluation of your child to determine whether your child is eligible to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent. The District must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the District to start providing special education and related services to your child.

If your child is enrolled in public school, or you are seeking to enroll your child in a public school, and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, the District may, but is not required to, use due process procedures in order to obtain consent to conduct an initial evaluation of your child. The District will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Initial Placement in Special Education. The District must get parental consent before providing special education and related services to your child. If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and the school district does not provide your child with the special education and related services for which it sought your consent, the District:

- Is not in violation of the requirement to make a FAPE available to your child for its failure to provide those services to your child; and
- Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

Addendum to Parent Procedural Safeguards effective January 1, 2009

This addendum replaces section Continued Placement in Special Education found on page 4.

Revoking your Consent for all special education and related services

If a parent refuses all services in the child's IEP and wishes to revoke consent for all special education and related services, the parent must do the revoke in writing with parent signature. You have the right to revoke your consent for your child to receive all special education and related services at any time. The school district does not have any procedure or right to deny your revocation of consent.

The district may ask you for the reason that you revoked your consent but you are not required to give a response to the district's question. You cannot be required to attend any meetings to discuss your revocation.

The district cannot file for a due process hearing or request mediation to dispute your request. The district is also protected by law from any later allegations that it failed to offer your child a free and appropriate education because you revoked your consent for services.

If you submit a written statement revoking your consent, the district will give you a Prior Written Notice to let you now that they have received your written revocation of consent for your child to receive services. The Notice will also tell you the date that all special education services will cease. The district is required to give you this notice before it can cease providing services to your child.

On the date all services cease, your child is not longer a student with disabilities under state and federal special education law. Your child will be subject to all rules and regulations of the school district. Your child will no longer be protected by these procedural safeguards except for those in respect to referral, assessment and identification. The accommodations and modifications, if any, which were

offered by your child's IEP will no longer be guaranteed. The protections and safeguards related to discipline, statewide and districtwide testing programs, graduation, and other educational areas guaranteed to students with disabilities will not longer be available to your child. Your child's placement will be in general education.

Your revocation of consent to receive special education is not retroactive and is only in affect when you give written notice stating that you want to revoke your consent for special education services. The prior written notice will state the date services will stop.

Your child can be referred again for assessment to determine if your child is eligible for special education. You cannot reinstate your consent once you have revoked it in writing and services will not automatically resume as they were stated in the last IEP. If your child is re-referred, the timelines and other procedures for an initial referral are in force.

Reevaluations. The District must obtain your informed consent before it reevaluates your child, unless the District can demonstrate that:

- It took reasonable steps to obtain your consent for your child's reevaluation; and
- You did not respond.

If you refuse to consent to your child's reevaluation, the District may, but is not required to, pursue your child's reevaluation by using the due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, the District does not violate its obligations under the IDEA if it declines to pursue the reevaluation in this manner.

What is, and how may I obtain an independent educational evaluation?

An independent educational evaluation (IEE) is an assessment conducted by a qualified examiner who is not employed by the District, but satisfies the same requirements that the District uses when it initiates an assessment. If you disagree with the results of a recent assessment conducted by the District, and make that disagreement known to the District, you have the right to request an IEE for your child at public expense from a qualified assessor. Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. The District has information available for you about where such an IEE may be obtained and what the District's criteria is for determining qualification.

If you request an IEE at public expense, the District must either (1) file a complaint for due process against you to prove that its assessment is appropriate; or (2) ensure that the IEE is provided to you at public expense. If the District proves at a due process hearing that its assessment is appropriate, you still have the right to an IEE, but not at public expense.

If you obtain an assessment at private expense and provide a copy of it to the District, the results of the assessment will be considered by the IEP team with respect to the provision of a FAPE to your child. The privately funded assessment may also be introduced at a due process hearing regarding your child.

If the District observed your child in conducting its assessment, or if the District's assessment procedures allow in-class observations of students, an individual conducting an IEE must be given an equivalent opportunity to observe your child in the current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the District, regardless of whether the IEE is initiated before or after the filing of a due process proceeding.

If a parent or guardian proposes a publicly financed placement of his/her child in a nonpublic school, the District shall have an opportunity to observe the proposed placement. The observation may only be of your child and may not include the observation or assessment of any other child in the proposed placement, unless the District has proper consent to do so.

When may I access educational records, and how do I do so?

General Information. All parents or guardians of children have the right to inspect records under the Family Educational Rights and Privacy Act (FERPA), which has been implemented in the California Education Code.

Educational records means those records that are directly related to your child and maintained by a school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained. Both federal and state laws further define a educational record as any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, computer or by other means. Educational records do not include informal personal notes prepared and kept by a school employee for his/her own use or the use of a substitute. If records contain information about more than one student, a parent can have access only to that portion of the record pertaining to his/her child.

Personally identifiable information may include: (1) the name of the child, the child's parent or other family member; (2) the address of the child; (3) a personal identifier such as the child's social security number, student number, or court file number; (4) a list of personal characteristics or other information that would make it possible to identify the child with a reasonable certainty.

Additionally, parents of a child with disabilities, including non-custodial parents whose educational rights have not been limited, are presumed to have the right to: (1) review all educational records regarding the identification, evaluation, and educational placement of the child and the provision of a FAPE to the child; and (2) receive an explanation and interpretation of the records. Under California law, parents have the right to review and to receive copies of educational records. These rights transfer to a non-conserved pupil who is eighteen years old or attending an institution of post-secondary education.

The custodian of records at each school site is the principal of the school. Educational records may be kept at the school site or the district office, but a written request for records at either site will be treated as a request for records from all sites. The custodian of records will provide you with a list of the types and locations of educational records (if requested).

Access. The District must permit you to inspect and review any educational records relating to your child. A review and/or copies of educational records will be provided to you within five (5) days of a request.

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The District may charge a fee for copies of the records, but not the cost to search and retrieve the records, unless charging the fee would effectively deny your access to your child's records. Once a complete copy of the records has been provided, a fee will be charged for additional copies of the same records.

The custodian of the records must limit access to educational records to those persons authorized to review the educational record, which includes the parents of the pupil, a pupil who is at least sixteen years old, individuals who have been authorized by the parent to inspect the records, school employees who have a legitimate educational interest in the records, post secondary institutions designated by the pupil, and employees of federal, state and local education agencies. In all other instances access will be denied unless the parent has provided written consent to release the records, the records are released pursuant to a court order or unless the law otherwise permits the District to release the records. The District must keep a log indicating the time, name and purpose for access of those individuals who are not employed by the District.

Destruction of Educational Records. Upon receiving notice that the records are no longer necessary to the District, you may request destruction of the records which will take place either by physical destruction or by removing personal identifiers from the records so that the information is no longer personally identifiable. However, the District is obligated to keep a permanent record for your child, which includes: (1) your child's name, address, and phone number; and (2) your child's grades, attendance records, classes attended, grade level completed, and year completed.

Amending Educational Records. If you believe that information in your child's educational records is inaccurate, misleading or violates the privacy or other rights of your child, you may request in writing that the District amend the information. If the District agrees with you, you will be informed, and your child's educational records will be amended accordingly. If the District refuses to amend your child's educational records, the District must, within 30 days, notify you of your right to request a hearing to determine whether the challenged information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

If, as a result of the hearing, the District decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the District decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency. Such an explanation placed in the records of your child must:

- Be maintained by the District as part of the records of your child as long as the record or contested portion is maintained; and
- If the District discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Disclosure of Educational Records. Unless the information is contained in educational records, and the disclosure is authorized without parental consent under FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies.

Your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the IDEA, except under the following circumstances:

- Your consent is required before identifiable information is released to officials of participating agencies providing or paying for transition services; and
- If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

DISPUTE RESOLUTION

If I have a complaint about my child's educational program, how do I raise it?

You have the right to present and resolve any complaint you have regarding your child's education. If you have any concerns relating to the your child's educational program, the District encourages you to bring your concerns the attention of the teacher, school administrator, or your child's IEP team.

If the District is not able to resolve your concerns through informal means, you may file a compliance complaint with either the District, or the California Department of Education.

As will be explained below, if your concern is related to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a FAPE to the child, you may file a request for due process hearing complaint. The District also has the right to file a request for due process on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a FAPE to your child.

What is a compliance complaint and what are my rights related to a compliance complaint?

All compliance complaints, which allege that the District violated the IDEA and/or California special education law must:

1. Be in writing;

2. Contain a statement that the District has violated a law or regulation under the IDEA or California Education Code;
3. Contain a description of the facts which support the allegation; and
4. Be signed by you, and contain your contact information.

If the complaint contains allegations that the District violated the law with regard to a specific child, the complaint must also contain:

1. The name and address of the child (or contact information for a homeless child);
2. The name of the school the child is attending;
3. A description of the nature of the problem and facts relating to the problem; and
4. To the extent known, a proposed resolution to the problem.

District Level Compliance Complaint: The District encourages you to file any complaint regarding special education issues directly with the District in order for it to quickly address your concerns in an informal and efficient manner. The District has established confidential procedures for the filing of these complaints and will meet with you to investigate your complaint in a timely manner and attempt to resolve any concerns. The Compliance Officer will assist you in resolving any complaint of discrimination against the district, its employees or contractors, and students. The Compliance Officer also is able to assist you to prepare your complaint in writing and to provide the information required by law. The Compliance Officer will refer you to other agencies responsible for the investigation and resolution of complaints when appropriate. A complaint filed with the District may be filed at the address located at the end of this notice.

State Level Compliance Complaint: Any individual or organization may file a compliance complaint alleging a violation of any IDEA or state law requirement by the District, the California Department of Education (CDE), or any other public agency. The Compliance Officer also is able to assist you to prepare your complaint in writing and to provide the information required by law. The Compliance Officer will refer you to other agencies responsible for the investigation and resolution of complaints when appropriate. Complaints should be filed with the CDE, at the address located on the last page of this notice.

Compliance complaints filed with the CDE must be filed within one (1) year from the date you knew or had reason to know of the facts that were the basis for the complaint.

Within sixty (60) days after your complaint is filed, the CDE will:

1. Carry out an independent on-site investigation, if necessary;
2. Give you the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Provide the District or other public agency with the opportunity to respond to the complaint, including, at a minimum:
 - a. At the option of the agency, a proposal to resolve the complaint; **and**
 - b. An opportunity for you and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the District or other public agency is violating a requirement of the IDEA and/or related State law; and
5. Issue a written decision to the you and the District that addresses each allegation in the complaint and contains:
 - a. Findings of fact and conclusions; and
 - b. The reasons for the final decision.

What is mediation and when can I request it?

Parties are encouraged to seek resolution of special education disputes through less adversarial processes such as mediation or alternative dispute resolution (ADR) prior to filing for a due process hearing.

You may ask the District to resolve disputes through mediation or ADR, which is less adversarial than a due process hearing. ADR and mediation are voluntary methods of resolving a dispute and may not be used to delay your right to a due process hearing.

You and the District must agree to try mediation before mediation is attempted. This mediation conference will be scheduled within fifteen (15) days and completed within thirty (30) days of the CDE's receipt of your request for mediation, unless both parties agree to an extension. The mediation will be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

If you and the District resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
2. Is signed by both you and a District representative who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal or State court.

What is a due process hearing and what are my rights related to it?

A due process hearing is a formal proceeding presided over by an administrative law judge which is similar to a court action. The hearing can be initiated by a parent or the District when there is a disagreement over a proposal or refusal to initiate or change the identification, assessment or educational placement of the child with a disability, or the provision of a FAPE to the child. Requests should be sent to Office of Administrative Hearings (OAH), at the address located on the last page of this notice.

The request for a due process hearing must be filed within two years from the date you knew or had reason to know of the facts that were the basis for the hearing request. This timeline does not apply to you if you were prevented from requesting a due process hearing earlier because the District: (1) misrepresented that it had resolved the problem which is the basis of your request; or (2) withheld information from you relating to the information contained in this notice.

Content of the Request for Due Process. Your request for due process must include the following information:

1. Your child's name,
2. Your child's address (or, in the case of a homeless child, the available contact information);
3. The name of the school your child attends;
4. A description of the problem relating to the proposed initiation or change, including specific facts about the problem; and
5. A proposed resolution to the problem to the extent it is known to you.

You must provide the District with a copy of your request for due process. You (or the District) may not have a due process hearing until a due process complaint that contains all of the information outlined above is filed.

Sufficiency of a Due Process Complaint. In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient, unless the party receiving the due process complaint (you or the District) notifies OAH and the other party, in writing, within fifteen (15) days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five (5) days of receiving the notification the receiving party considers a due process complaint insufficient, OAH must decide if the due process complaint meets the requirements listed above, and notify you and the District in writing immediately. If OAH determines that a due process complaint is insufficient, the party will have the opportunity to file a new complaint that meets the requirements listed above.

Resolution Session. If you request a due process hearing, within 15 days of receiving a your request for due process, the District must convene a meeting with you, the relevant member(s) of your child's IEP Team who have specific knowledge of the facts identified in the due process hearing request, and a District representative who has decision-making authority, to discuss a resolution to the issues raised. The meeting will not include the District's attorney, unless you are accompanied by an attorney.

The resolution meeting is not necessary if:

- You and the District agree in writing to waive the meeting; or
- You and the District agree to use the mediation process.

Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If an agreement is reached at the resolution session, the agreement must be memorialized in writing and signed by both you and the District representative. After signing, both you and the District have three business (3) days to void the agreement. If the District has not resolved the due process complaint to your satisfaction within 30 days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur, and the applicable timeline for issuing a final decision begins.

Prehearing Mediation. You and the District may agree, at any time prior to the commencement of the due process hearing to participate in a mediation of the dispute. An impartial mediator will be appointed by OAH at no cost to either party. Mediation extends OAH's timeline to render its decision; however, mediation is not intended to deny or delay your right to a hearing, or any other rights.

Due Process Hearing. If the issues which gave rise to the request for due process are not resolved by the resolution session or mediation, OAH must hold a hearing, reach a final decision on the issues in the case, and send a copy of the decision to the parties within forty-five (45) days of the expiration of the resolution period. The hearing must be held at a time and place that is reasonably convenient to the parties.

Any party to a due process hearing has the right to:

1. A fair and impartial administrative hearing before a person knowledgeable in laws governing special education and administrative hearings;
2. Be represented by an attorney or an advocate with knowledge and training related to the problems of children and youth with disabilities;
3. Present evidence, written arguments, and oral arguments;
4. Confront, cross examine, and require witnesses to be present;
5. Obtain a written, or at your option, electronic verbatim record of the hearing,

6. Obtain written, or, at your option, electronic findings of fact and decisions, within 45 days after the expiration of the resolution session time period.
7. Receive notice from the other party, at least ten days prior to the hearing, that it intends to be represented by an attorney.
8. Be informed by the other party, at least ten days prior to the hearing, of their issues and their proposed resolutions.
9. Receive a copy of all documents, including assessments completed by that date and recommendations, and a list of witnesses and their general area of testimony at least five business days before the hearing.
10. Have your child present at the hearing;
11. Have the hearing open or closed to the public;
12. Have an interpreter provided;
13. Request an extension of the hearing timeline for good cause; and
14. Request that the District, the SELPA or OAH provide you with a list of individuals providing legal services or advocacy for children with disabilities.

If I disagree with the results of a due process hearing, may I appeal it in a civil action?

The hearing decision is final and binding on both parties. Either party may appeal the decision by filing an appeal in the appropriate court. In a civil action, the records and transcription of the administrative proceedings will be filed with the court. The court may hear additional evidence at the request of either party and must base its decision on the preponderance of the evidence. This appeal must be made within ninety (90) days after the date of the decision of the hearing officer.

Where will my child be placed during the pendency of a due process hearing?

Once a request for due process is received by the District, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, your child must remain in his or her current educational placement, unless you and the District agree otherwise.

If your request for due process involves an application for initial admission to public school, your child, with your consent, must be placed in the general public school program until the completion of all such proceedings.

If your request for due process involves an application for initial services for a child who received services pursuant to an individual family services plan ((IFSP), and has turned three, the District is not required to provide the IFSP services that your child had been receiving. If your child is found eligible for special education services from the District, and you consent for your child to receive special education services for the first time, then, pending the outcome of the due process proceedings, the

District must provide those special education and related services that are not in dispute (those which you and the District both agree upon).

If your child has been placed in an interim alternative educational setting (IAES), he or she will remain in the IAES for a maximum of 45 school days pending the due process hearing, or until the expiration of the time period for the IAES, whichever occurs first.

Under what circumstances could my attorneys' fees be reimbursed to me?

A court, in its discretion, may order that the District pay reasonable attorneys' fees to the parent of a child with disabilities if the parent prevails at a due process hearing. Additionally, the District may be awarded attorneys' fees against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

A court may award reasonable attorneys' fees consistent with the following:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed after a written offer of settlement to you if:
 - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
 - b. The offer is not accepted within 10 calendar days; and
 - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.
 - d. Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
3. Fees may not be awarded relating to any meeting of the IEP team unless the meeting is held as a result of an administrative proceeding or court action.
4. A resolution meeting is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court may reduce, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;

2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the District the appropriate information in the request for due process.

However, the court may not reduce fees if the court finds that the District unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of the IDEA.

SCHOOL DISCIPLINE AND PLACEMENT PROCEDURES FOR STUDENTS WITH DISABILITIES

Part 1 - Authority of School Personnel

A. In General. To the extent that the District also takes such action for children without disabilities, District personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an interim alternative educational setting (which must be determined by the child's IEP team), another setting, or suspension for no more than 10 school days in a row. District personnel may also impose additional removals of the child for no longer than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, the District must during any subsequent days of removal provide services to the extent required in Part 3 below.

B. Change of Placement. A removal of a child with a disability from the child's current educational placement is a change of placement if:

1. The removal is for more than 10 consecutive school days; **or**
2. The child has been subjected to a series of removals that constitute a pattern because:
 - a. The series of short-term removals total more than 10 school days in a school year;
 - b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - c. Of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the District and, if challenged, is subject to review through the due process and judicial proceedings described in the Dispute Resolution section above and Part 4 below.

On the date on which the decision is made to make a removal that constitutes a change in placement of a child with a disability because of a violation of a code of student conduct, the District will notify the parents of its decision and provide them with written notice of all of their parental rights and procedural safeguards.

District officials are permitted to report crimes committed by the child with a disability to appropriate authorities. District officials must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration to the appropriate authorities to whom the District reports the crime. However, these records may only be transmitted consistent with the Family Educational Rights and Privacy Act.

C. Manifestation Determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change in placement), the District, parent and relevant IEP team members (as determined by the parent and District) must review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information parents provide, to determine whether the conduct in question was: (1) caused by, or had a direct and substantial relationship to the child's disability; or (2) the direct result of the District's failure to implement the child's IEP.

If the District, parent and relevant members of the IEP team determine that either of these conditions was met, the conduct must be determined to be a manifestation of the child's disability. Also, if the District, parent and relevant members of the IEP team determine that the conduct in question was the direct result of the District's failure to implement the IEP, the District must take immediate steps to remedy those deficiencies.

If the District, parent and relevant members of the IEP team determine that the conduct was a manifestation of the child's disability, the IEP team must either:

1. Conduct a functional behavioral assessment, unless the District conducted a functional behavioral assessment before the behavior occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except in cases where the child has been moved to an interim alternative educational setting (IAES) under special circumstances (described below), the District must return the child to the placement from which the child was removed, unless the parent and the District agree to a change of placement as part of the modification of the behavioral intervention plan.

For disciplinary changes in placement that would exceed 10 consecutive days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the disciplinary procedures to children with disabilities in the same

manner and for the same duration as the procedures would be applied to children without disabilities except they are to receive the educational services as described in Part 3 below.

Part 2 - Removal to an IAES¹

Children with disabilities may be placed in an IAES for up to 45 school days:

1. **Special Circumstances.** Regardless of whether the behavior was a manifestation of the child's disability, school personnel may remove a student to an IAES (as determined by the child's IEP team) for up to 45 school days, if the child:

¹ The federal regulations also provide that when a child with a disability is removed from his or her regular IEP placement, he or she may be provided services in an IAES consistent with Part 3 below.

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the District and/or the California Department of Education (CDE);
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the District and/or the CDE; **or**
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District and/or the CDE.

B. **Administrative Law Judge.** An Administrative Law Judge ("ALJ") may order a change in placement of a child with a disability to an IAES if the ALJ determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Part 3 – Educational Services

A. **Short Term Removals Not Constituting a Change of Placement.** For a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, the District is only required to provide educational services to the child if it provides services to a child without disabilities who is similarly removed.

B. **Short-Term Removals of More Than 10 School Days Not Constituting a Change in Placement.** After a child with a disability has been removed from his or her current placement for 10 school days in that same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement as described above, then District personnel in consultation with at least one of the child's teachers, will determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

C. Long Term Removals and Short Term Removals Constituting a Change in Placement. If a child with a disability is removed from his or her current placement for more than 10 school days and the behavior was determined not to be a manifestation of the child's disability pursuant to Part 1.C. above, or is removed to an IAES for up to 45 days under special circumstances, then the child must:

1. Continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

Part 4 – Appeal

Parents may file a request for an expedited due process hearing if they disagree with: (1) any decision regarding placement made under these discipline provisions; or (2) the manifestation determination described above.

The District may file a request for a due process complaint if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

When the parent or the District files a due process complaint related to disciplinary matters, the child must (unless the parent and the District agree otherwise) remain in the IAES pending the decision by an ALJ, or until the time period of the removal has expired.

The ALJ will hear and make a decision regarding the appeal. After the due process hearing, the ALJ may:

1. Return the child with a disability to the placement from which the child was removed if the ALJ determines that the District failed to follow the requirements described above, or that the child's behavior was a manifestation of the child's disability; or
2. Order a change of placement of the child with a disability to an appropriate IAES for up to 45 school days if the ALJ determines that maintaining the child's current placement is substantially likely to result in injury to the child or to others.

These expedited due process hearing procedures may be repeated, if the District believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Parents or the District may appeal the decision in an expedited due process hearing in the same way as decisions in other due process hearings.

Part 5 - Protections For Children Who Are Not Yet Eligible For Special Education Services

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the District had knowledge (as defined below) before the behavior that precipitated the disciplinary action that occurred that the child was a child with a disability, then the child may assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters. The District is deemed to have knowledge that a child is a child with a disability, before the behavior that precipitated the disciplinary action occurred, if:

1. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
2. The parent requested an evaluation related to eligibility for special education and related services under the IDEA; or
3. The child's teacher or other District personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the District's special education administrator or to other supervisory personnel of the school district.

Exception. The District would not be deemed to have such knowledge if the parent of the child:

1. Has not allowed an evaluation of the child;
2. Refused special education services; or
3. The child has been evaluated and determined to not be a child with a disability.

Conditions that apply if there is no basis of knowledge. If prior to taking disciplinary measures against the child, the District does not have knowledge that a child is a child with a disability, as described above, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors. However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by District personnel, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by the parents, the school district must provide special education and related services in accordance with the IDEA, including the disciplinary requirements described above.

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CHILDREN ATTENDING PRIVATE SCHOOL

What are the rules relating to my decision to unilaterally place my child in a private school?

The District is not required to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a FAPE available to your child in a timely manner, and you choose to place the child in a private school or facility.

Even if the District is required to reimburse you for your private placement, reimbursement may be reduced if:

1. You failed to inform the District, in writing, that you were rejecting the proposed placement and of your intent to place your child in a private school at public expense at:
 - a. the most recent IEP, or
 - b. at least ten (10) business days prior to the removal of your child from public school;
2. Prior to removing your child from public school, the District informed you of its intent to evaluate your child, and you refused to permit the evaluation, or did not make your child available for the evaluation; or
3. Upon a judicial finding of unreasonableness with respect to your actions.

Reimbursement cannot be reduced if the District prevented the parent from giving notice; the parent had not received notice of the “written notice” requirement; or if compliance with the notice requirement would likely result in the physical harm to the child. The cost of reimbursement may or may not be reduced if you are not literate or cannot write in English, or compliance with the notice requirement would likely result in serious emotional harm to the child.

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